IN THE

Supreme Court of the United States

OCTOBER TERM, 1971.

No. ~~230~~ 70-153

UNITED STATES,

Petitioners,

vs.

UNITED STATES DISTRICT COURT,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

~~PETITION FOR LEAVE TO FILE AN AMICUS CURIAE BRIEF~~ AND BRIEF OF AMERICAN FEDERATION OF TEACHERS AS AMICUS CURIAE.

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PETITION FOR LEAVE TO FILE AN AMICUS CURIAE BRIEF.

Now comes the American Federation of Teachers by its General Counsel, John Lightenberg, and petitions the Court for leave to file a brief as amicus curiae in the above captioned cause and in support thereof states as follows:

1. The American Federation of Teachers is a union of teachers affiliated with the AFL-CIO. The overwhelming majority of its members teach in the public schools. The American Federation of Teachers is composed of approximately 1,000 locals throughout the United States and overseas with more than 250,000 members.

2. The American Federation of Teachers and its local unions and many of its members have been involved in much litigation throughout the United States concerning

the right of teachers to join organizations, refrain from disclosing their affiliations and the constitutionality of loyalty oaths.

3. The American Federation of Teachers is deeply interested in the case at bar, as the decision of this Court in the case at bar will have a substantial effect upon the rights of its members, and may well have a profound effect upon the ability of teachers to take part in the activities of organizations.

4. In addition because the use of electronic monitoring equipment is becoming widespread in schools the decision in this case may have an even more profound effect upon the way teachers conduct classes and conduct conferences with parents, students and fellow teachers.

5. A request has been made of the attorneys representing the appellant and appellee seeking their consent to the filing of a brief amicus curiae by the American Federation of Teachers.

WHEREFORE, petitioner asks leave that its brief amicus curiae may be filed with this Court.

Respectfully submitted,

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BRIEF OF AMERICAN FEDERATION OF TEACHERS AS AMICUS CURIAE.

INTRODUCTION.

The Court of Appeals opinion quotes the Attorney General's statement of the avowed purpose of the instant wiretapping program:

> "to gather intelligence information deemed necessary to protect the nation from attempts of domestic organizations to attack and subvert the existing structure of the Government."

The government seeks to carry on its program without having to obtain search warrants prior to undertaking electronic surveillance.

Basic constitutional principles—the doctrine of separation of powers and the scope of presidential powers of course are of great significance in this case. However, the American Federation of Teachers in this brief wishes to direct the court's attention to the effect of unchecked eavesdropping upon the public service and more particularly on the classroom.

ARGUMENT.

I.

PUBLIC EMPLOYEES AND PARTICULARLY TEACHERS HAVE BEEN THE OBJECT OF UNNECESSARY AND UNWARRANTED CHARGES AND INVESTIGATIONS REGARDING THEIR LOYALTY AND THE ORTHODOXY OF THEIR IDEAS.

Whether there has been a desire to protect society from teachers who might actually be attempting to overthrow the government or whether there has been a desire to simply maintain orthodoxy in the classroom, it is apparent that teachers have, as a group, often become the subject of unfounded suspicion and unwarranted accusations.

This Court has struck down as unconstitutional a variety of loyalty oaths that have been imposed on teachers. See *Weiman* v. *Updegraff*, 344 U. S. 182 (1952); *Cramp* v. *Board of Public Instruction*, 368 U. S. 278 (1961); *Baggett* v. *Bullitt*, 377 U. S. 360 (1964); *Elfbrandt* v. *Russell*, 384 U. S. 11 (1966); *Keyishian* v. *Board of Regents*, 385 U. S. 589 (1967) and *Whitehill* v. *Elkins*, 389 U. S. 54 (1967).

Likewise this Court has espoused the principle that teachers must have a wide range of freedom in conducting their classes.

In *Shelton* v. *Tucker*, 364 U. S. 479, 387 (1960), this Court said the "vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools." In *Epperson* v. *Arkansas*, 393 U. S. 97, 104 (1968) the Court said it would not fail to apply "the First Amendment's mandate in our educational system where essential to safeguard the fundamental values of freedom of speech and inquiry and of belief." In *Tinker* v. *Des Moines Independent Community School District*, 393 U. S. 503, 513 (1969), this Court said: ". . . we do not confine the permissible exercise of First Amendment rights to a telephone booth or the four corners of a pamphlet, or to supervised and ordained discussion in a school classroom."

In *Pickering* v. *Board of Education*, 391 U. S. 563 (1968) this Court reversed the discharge of a teacher who had been critical of school officials noting that teachers do have full constitutional rights.

That such cases continue to come to this Court for review is ample proof that there remains a continuing disregard for the principle that this Court has so well articulated—Public school teachers have full constitutional rights.

The American Federation of Teachers is keenly aware of the subtle social and political restrictions which are imposed upon teachers.

To add to those restrictions the possibility of being monitored because of some association or unorthodox statement only tends to suppress freedom of expression and association.

The era of stringent loyalty oaths and required support of the status quo hopefully has ended. However, the memory of job denials because of suspected union affiliation or possible disloyalty is still fresh.

II.

THE ALLOWANCE OF UNCHECKED POWER TO EAVESDROP WILL HAVE A SERIOUS NEGATIVE IMPACT ON SCHOOLS.

We suggest to the Court that its decision in this case will have a profound effect on the practice of electronic surveillance in other areas of government. Currently there is probably more eavesdropping going on in American schools than any other area of government. This is the result of one aspect of the building boom since World War II.

Electronic monitoring systems are regularly installed as part of new schools. These systems allow the main office to communicate with classrooms and vice versa by the simple flip of a switch. The presence of the monitoring devices is obvious. But many teachers have learned that although they have turned the switch in their classrooms to the "off" or "private" position, the equipment still is operative. Thus, conversations whether in the conducting of a class or the course of a conference are subject to being overheard.

As a result, in many classrooms and even whole campuses throughout the United States teachers take special care in what they say and to whom they speak. We need not reach the question of what circumstances might justify school officials in eavesdropping by the use of electronic equipment. What we do comment on is the fact that school officials install such equipment without any consideration for the rights of teachers, students and parents to be free from being monitored.

Indeed, it seems that some college campuses are being "wired" with listening devises and television cameras. This may be a reaction of the campus violence of recent

years. But, if so, we suggest it is a violent over-reaction that needs to be countered at once.

We suggest to the Court that should it approve the Attorney General's program such approval would likely eliminate any inhibitions which school officials presently have about listening in on classroom conversations.

While these considerations may be somewhat removed from the central issue in the case at bar they do underscore the need for a reaffirmation of the right of citizens to privacy not just in possible criminal prosecutions but in everyday life.

Eavesdropping is one aspect of human conduct which is not well adapted to self restraint. Indeed it is of the nature of curiosity that it throws over restraints. In an age in which sophisticated devices allow intrusion into the private matters of other people there is an even greater need for restraint of government through Court supervision. We suggest that the Court resist the effort of the Attorney General to eavesdrop without Judicial supervision.

CONCLUSION.

The American Federation of Teachers supports the position that if electronic surveillance is justified in any case it nevertheless must be under judicial supervision.

Respectfully submitted,

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